

U.S.S.N. 10/621,131

-6-

ML 0166 PUS

REMARKS

Claims 1-3 and 6-7 are currently pending in the above application. Claims 4, 5 and 8-16 have been withdrawn from consideration.

Claim 7 stands objected to because the term "said predetermined angle" lacks antecedent basis. Applicant has corrected claim 7 to properly depend from claim 6, wherein the term "predetermined angle" has proper antecedent basis. Reconsideration of claim 7 is thus respectfully requested.

Claims 1-3, 6 and 7 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Foster (U.S. Patent Application No. 2,877,686) in view of Schmidt (U.S. Patent Application No. 4,938,575). Applicants respectfully traverse the Examiner's rejection.

Section 2143 of the Manual of Patent Examining Procedure states that three basic criteria must be met for establishing a *prima facie* case of obviousness, stating:

"First, there must some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach all of the claim limitations."

"If the examiner does not establish a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." Section 2142 MPEP, ch. 2100, p. 110. "When the references cited by the Examiner fail to establish a *prima facie* case of obviousness, the rejection is improper and will be overturned."¹ One cannot use

¹ *In re Ochiai*, 71 F.3d 1565, 37 U.S.P.Q.2d 1127 (Fed. Cir. 1995), *citing In re Fine*, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

hindsight reconstruction, picking and choosing among isolated disclosures in the prior art, to deny that the claimed invention is unobvious.²

Here, the Examiner has not established a *prima facie* case of obviousness because there is no suggestion or motivation to modify Foster with Schmidt as the Examiner suggests.

Foster discloses an adjustable rearview mirror that includes a support or bracket that is mounted to a motor vehicle, a casing mounted on the support for rotation on a substantially vertical axis, a mirror affixed to the casing, and means, including electronic means, for rotating the casing and the mirror in one of two directions opposite each other. The amount of rotation is limited between a first and second position as shown in the top view of Figure 3. As the Examiner indicates, Foster does not disclose the mirror to be arcuate and does not show the mirror mounted to the front surface of the vehicle.

As one of ordinary skill in the relevant art recognizes, a rearview mirror is not the equivalent of a crossview mirror. A rearview mirror, by definition, views the area behind the driver (i.e. vehicles rearward of him or her). The rearview mirror is mounted within the car, or possibly at a location outside of and near the driver and passenger windows. Further, the rearview mirror preferably utilizes a flat surface mirror so as to receive an accurate representation of the size and location of objects located behind or otherwise rearward of the mirror.

A crossview mirror, on the other hand, as emphasized in paragraph [0011] of the specification, is designed and mounted on the front corner of a bus to provide the driver with visual access to the area in front of the bus that is hidden from direct view as well as to the opposite side of the bus. The arcuate surface of this cross-view mirror distorts the sizes of the images, but provides a wider field-of-view. Currently available mirrors are required to comply with a particular forward, rightward, and leftward visual orientation as mandated by FMVSS 111.

² In re Fine, 837 F.2d at 1075.

U.S.S.N. 10/621,131

-8-

ML 0166 PUS

Thus, the mounting of a rearview mirror at a location of the exterior front surface of the cab would not be contemplated in a conventional rearview mirror assembly, much less the rearview mirror assembly of Foster. Further, the use of an arcuate mirror having a reflective surface would similarly not be contemplated in a typical rearview assembly, including one such as Foster.

As such, the addition of the mounting location and arcuate mirror as taught in Schmidt to the rearview mirror assembly in Foster is not reasonable and would not be done by persons skilled in the art. Thus, the Examiner has not established the first basic criteria for establishing a *prima facie* case of obviousness as required by MPEP 2143. As such, claims 1-3 and 6-7 are allowable over the cited prior art. Reconsideration of claims 1-3 and 6-7 is thus respectfully requested.

The Examiner is invited to telephone the Applicant's undersigned attorney at (248) 223-9500 if any unresolved matters remain.

Respectfully submitted,

ARTZ & ARTZ, P.C.

By: Steven W. Hays
Steven W. Hays
Reg. No. 41,823
28333 Telegraph Road
Suite 250
Southfield, MI 48034
(248) 223-9500

Dated: June 6, 2005